

under § 314.65 or abbreviated application under § 314.99. A decision to withdraw the application or abbreviated application is without prejudice to refiling;

(3) For a new drug application or an abbreviated application, ask the agency to provide the applicant an opportunity for a hearing on the question of whether there are grounds for denying approval of the application under section 505(d) or (j)(3) of the act. The applicant shall submit the request to the Associate Director for Policy (HFD-5), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Within 60 days of the date of the not approvable letter, or within a different time period to which FDA and the applicant agree, the agency will either approve the application or abbreviated application under § 314.105 or refuse to approve the application or abbreviated antibiotic application under § 314.125 or abbreviated new drug application under § 314.127 and give the applicant written notice of an opportunity for a hearing under § 314.200 and section 505(c)(1)(B) or (j)(4)(C) of the act on the question of whether there are grounds for denying approval of the application under section 505(d) or (j)(3) of the act;

(4) For an antibiotic application, file a petition or notify FDA of an intent to file a petition proposing the issuance, amendment, or repeal of a regulation under § 314.300 and section 507(f) of the act; or

(5) Notify FDA that the applicant agrees to an extension of the review period under section 505(c)(1) or (j)(4)(A) of the act, so that the applicant can determine whether to respond further under paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section. The applicant's notice is required to state the length of the extension. FDA will honor any reasonable request for such an extension. FDA will consider the applicant's failure to respond further within the extended review period to be a request to withdraw the application under § 314.65 or abbreviated application under § 314.99. A decision to withdraw an application or abbreviated application is without prejudice to a refiling.

(b) With the exception of a request for an opportunity for a hearing under

paragraph (a)(3) of this section, the 10-day time period in this section for responding to a not approvable letter does not apply to abbreviated new drug applications. FDA may consider the applicant's failure to respond within 180 days to a not approvable letter to be a request by the applicant to withdraw the abbreviated new drug application under § 314.99.

[57 FR 17990, Apr. 28, 1992, as amended at 62 FR 43639, Aug. 15, 1997]

§ 314.122 Submitting an abbreviated application for, or a 505(j)(2)(C) petition that relies on, a listed drug that is no longer marketed.

(a) An abbreviated new drug application that refers to, or a petition under section 505(j)(2)(C) of the act and § 314.93 that relies on, a listed drug that has been voluntarily withdrawn from sale in the United States must be accompanied by a petition seeking a determination whether the listed drug was withdrawn for safety or effectiveness reasons. The petition must be submitted under §§ 10.25(a) and 10.30 of this chapter and must contain all evidence available to the petitioner concerning the reasons for the withdrawal from sale.

(b) When a petition described in paragraph (a) of this section is submitted, the agency will consider the evidence in the petition and any other evidence before the agency, and determine whether the listed drug is withdrawn from sale for safety or effectiveness reasons, in accordance with the procedures in § 314.161.

(c) An abbreviated new drug application described in paragraph (a) of this section will be disapproved, under § 314.127(a)(11), and a 505(j)(2)(C) petition described in paragraph (a) of this section will be disapproved, under § 314.93(e)(1)(iv), unless the agency determines that the withdrawal of the listed drug was not for safety or effectiveness reasons.

(d) Certain drug products approved for safety and effectiveness that were no longer marketed on September 24, 1984, are not included in the list. Any person who wishes to obtain marketing approval for such a drug product under an abbreviated new drug application must petition FDA for a determination

whether the drug product was withdrawn from the market for safety or effectiveness reasons and request that the list be amended to include the drug product. A person seeking such a determination shall use the petition procedures established in § 10.30 of this chapter. The petitioner shall include in the petition information to show that the drug product was approved for safety and effectiveness and all evidence available to the petitioner concerning the reason that marketing of the drug product ceased.

[57 FR 17990, Apr. 28, 1992; 57 FR 29353, July 1, 1992]

§ 314.125 Refusal to approve an application or abbreviated antibiotic application.

(a) The Food and Drug Administration will refuse to approve the application or abbreviated antibiotic application and for a new drug give the applicant written notice of an opportunity for a hearing under § 314.200 on the question of whether there are grounds for denying approval of the application under section 505(d) of the act, or for an antibiotic publish a proposed regulation based on an acceptable petition under § 314.300, if:

(1) FDA sends the applicant an approvable or a not approvable letter under § 314.110 or § 314.120;

(2) The applicant requests an opportunity for hearing for a new drug on the question of whether the application is approvable or files a petition for an antibiotic proposing the issuance, amendment, or repeal of a regulation; and

(3) FDA finds that any of the reasons given in paragraph (b) of this section apply.

(b) FDA may refuse to approve an application or abbreviated antibiotic application for any of the following reasons:

(1) The methods to be used in, and the facilities and controls used for, the manufacture, processing, packing, or holding of the drug substance or the drug product are inadequate to preserve its identity, strength, quality, purity, stability, and bioavailability.

(2) The investigations required under section 505(b) or 507 of the act do not include adequate tests by all methods

reasonably applicable to show whether or not the drug is safe for use under the conditions prescribed, recommended, or suggested in its proposed labeling.

(3) The results of the tests show that the drug is unsafe for use under the conditions prescribed, recommended, or suggested in its proposed labeling or the results do not show that the drug product is safe for use under those conditions.

(4) There is insufficient information about the drug to determine whether the product is safe for use under the conditions prescribed, recommended, or suggested in its proposed labeling.

(5) There is a lack of substantial evidence consisting of adequate and well-controlled investigations, as defined in § 314.126, that the drug product will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its proposed labeling.

(6) The proposed labeling is false or misleading in any particular.

(7) The application or abbreviated antibiotic application contains an untrue statement of a material fact.

(8) The drug product's proposed labeling does not comply with the requirements for labels and labeling in part 201.

(9) The application or abbreviated antibiotic application does not contain bioavailability or bioequivalence data required under part 320 of this chapter.

(10) A reason given in a letter refusing to file the application or abbreviated antibiotic application under § 314.101(d), if the deficiency is not corrected.

(11) The drug will be manufactured or processed in whole or in part in an establishment that is not registered and not exempt from registration under section 510 of the act and part 207.

(12) The applicant does not permit a properly authorized officer or employee of the Department of Health and Human Services an adequate opportunity to inspect the facilities, controls, and any records relevant to the application or abbreviated antibiotic application.

(13) The methods to be used in, and the facilities and controls used for, the manufacture, processing, packing, or holding of the drug substance or the